APPENDIX A

Opinion

This is the trial of an action brought by three railroad companies,—Atlantic Coast Line Railroad Company, Boston and Maine Corporation, and Des Moines Union Railway Company—, against the Brotherhood of Railroad Trainmen, a union composed of railroad employees, for an injunction restraining the defendant from calling a strike because of a dispute over the size and composition of train and yard crews.

The gravamen of the action is the contention that the defendant has not exhausted its remedies under the Railway Labor Act, and that a strike prior to completed recourse to them is illegal. The Union seeks the adoption of a uniform rule on all railroads providing that every train and yard crew shall consist of a minimum of three persons: a conductor and two brakemen in the case of trains, and a foreman and two helpers in the case of yards. On the other hand, the railroads maintain that in many instances a smaller crew is sufficient to do the necessary work without endangering safety. In the parlance of the railroad industry, the composition of crews is colloquially known as "crew consist."

At the commencement of this action a ten-day temporary restraining order was issued by this Court on the plaintiffs' application. Simultaneously plaintiffs' counsel moved for a preliminary injunction. On the return day of this motion, the Court, with the consent of counsel for both sides, ordered that the trial of the action on the merits be advanced and consolidated with the hearing on the application for a preliminary injunction, as authorized by the recent amendment to Rule 65(a)(2) of the Federal Rules of Civil Procedure. In a commendable manner, counsel for the defendant announced that he was authorized by his client to make a commitment that it would not call a strike until after the entry of judgment of this Court following the trial of the action. Under the circumstances, both sides deemed a continuation of the temporary restraining order or the granting of a preliminary injunction superfluous.

Subsequent proceedings, including the trial, were conducted on the same high plane by all parties and their counsel.

As the controversy presented to the Court is founded on the construction and application of the Railway Labor Act, it is desirable at the outset to analyze and summarize the statutory scheme. The Railway Labor Act (Act of May 20, 1926, 44 Stat. 577, as amended by the Act of June 21, 1934, 48 Stat. 1186; 45 U.S.C. §§ 151-163) established a system for the amicable adjustment of labor disputes in the railroad industry. It contains a well-conceived, carefully planned, elaborate system for the settlement of differences between carriers and their employees by means of negotiation, mediation, and arbitration. It provides in detail certain specified steps to be successively pursued in chronological order when such a controversy arises. Neither employers nor employees may unilaterally make or insist on any changes in agreements affecting rates of pay, rules, or working conditions, without first resorting to the remedies provided by the Act. Chief Justice Hughes stated that the major purpose of Congress in passing the Railway Labor Act was to provide a machinery to prevent strikes, *Texas & N.O.R.Co.* v. *Ry. Clerks,* 281 U. S. 548, 565.

It is emphatically announced in the statute that "It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, . . . in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof." Sec. 2, 45 U.S.C. §152, par. "First." The provision immediately following prescribes that, "All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conferences between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute."

It is expressly provided that no carrier shall change the rates of pay, rules, or working conditions of its employees as a class, as embodied in agreements, except in the manner

prescribed in the agreements, or in Section 6 of the Act, 45 U.S.C. § 156. It is then directed that the initial step to be taken either by a carrier or by an organization of employees in the event that either desires an alteration in existing arrangements, is to serve a thirty days' written notice of intention to achieve the change, Sec. 6, 45 U.S.C. § 156. Such notices have come to be known in the industry as "Section 6 notices". A time and place for the beginning of conferences between the representatives of the parties, are then to be agreed upon within ten days after the receipt of the notice. The date of the first conference must be within the thirty-day period named in the notice.

If conferences do not result in a settlement of the dispute, the next step is mediation. For that purpose the President of the United States was authorized to create a permanent agency, known as "The National Mediation Board", Sec. 4, 45 U.S.C. § 154. Any party to a dispute is authorized to invoke its services. In addition the Board may proffer its aid on its own initiative. The duty of the Board is to use its best efforts to bring the parties to an agreement by mediation. If its attempts are unsuccessful, the Board is directed to endeavor to induce the parties to submit their controversy to arbitration. If arbitration is refused the Board must at once notify both parties in writing that its efforts at mediation have failed. For thirty days thereafter no change may be made in the rates of pay, rules, or working conditions, or established practices, Sec. 5, 45 U.S.C. § 155. At the end of this thirty-day period, the remedies under the Railway Labor Act are deemed exhausted, unless in the judgment of the Board the dispute threatens to interrupt interstate commerce substantially, and the Board so notifies the President. He may thereupon appoint an Emergency Board to investigate and report concerning the dispute. After the creation of the Emergency Board and for thirty days after it has submitted its report to the President, no change, except by agreement, may be made by the parties in the conditions out of which the dispute arose. Sec. 10, 45 U.S.C. § 160.

At the expiration of the thirty-day period following the termination of mediation or the submission of the report of the Emergency Board, as the case may be, if the dispute

still remains unresolved, either party may act unilaterally and resort to self-help. Specifically, the carrier may proceed to make desired changes in rates of pay, rules, or working conditions and discharge employees whom it deems unnecessary. On the other hand, the employees organization may call a strike, *Brotherhood of Locomotive Engineers* v. *B. & O. R. Co.*, 372 U.S. 284. Conversely, neither party may resort to self-help until all of the remedies provided by the Railway Labor Act have been exhausted, and the thirty-day period has elapsed.[1]

The present controversy had its inception on November 2, 1959. At that time carriers comprising almost all Class I railroads in the United States, approximately 200 in number, served notices under Section 6 of the Railway Labor Act, proposing uniform changes in various work and compensation rules. The proposal had two principal aspects. The first was an elimination of firemen on Diesel engines in freight and yard service. The second was an abrogation of all regulations concerning size and composition of train and yard crews. On September 7, 1960, counter notices were served by the various employees' organizations, including the defendant Brotherhood. The Unions by a subsequent clarification proposed the adoption of a uniform rule requiring not less than one conductor and two brakemen, or one foreman and two helpers on all train and yard crews.

Resort was had successively to the various remedies accorded by the Railway Labor Act, including an Emergency Board specially appointed by the President. All efforts at an amicable settlement, however, proved unavailing. A nationwide strike was imminent, which would have created a national disaster. Congress promptly passed a Joint Resolution, which was approved by the President on August 28, 1963, Public Law 88-108, 77 Stat. 132.[2] It directed a

---

[1] This Court had occasion to review and summarize the provisions of the Act in *Akron & Barberton R. Co.* v. *Brotherhood of R. Trainmen*, 250 F. Supp. 691, 692.

[2] The events leading to the enactment of the Joint Resolution are narrated in greater detail in *Brotherhood of Locomotive Firemen and Enginemen* v. *Chicago, B. & Q. R. Co.*, 225 F. Supp. 11, 14-15.

compulsory binding arbitration of the dispute by a special arbitration board, to consist in part of members to be designated by each of the contending groups, and in part of members to be selected by the President. Strikes and lockouts over the dispute were forbidden during the effective term of the statute. The Joint Resolution was to expire 180 days after the date of its enactment, except that it was to remain in effect for the period of the Award with respect to any award that might be made by the Arbitration Board. The time during which the award should continue in force was to be fixed by the Board, but was not to exceed two years from the date when it took effect.

In due course the special board, known as Arbitration Board 282, filed its Award, which became effective on January 25, 1964. It prescribed that the Award should remain in effect for two years, i.e., until January 25, 1966. This decision disposed of the issue relating to the employment of firemen on Diesel engines in freight and yard service. That aspect of the matter is not involved in the present litigation and, therefore, will not be discussed in this opinion. The Award also determined the "crew consist" issue in the following manner. A series of standards or criteria denominated as "guidelines", were formulated. They were to be followed in determining the size and composition of individual train and yard crews. No changes were to be made in any rule or practice requiring a stipulated number of trainmen, brakemen, or helpers, except by agreement. Any party, however, was permitted to give written notice of any desired alteration. If the matter was not then adjusted in conference and no agreement was reached, the subject was to be referred to a special board of adjustment, whose decision was to be binding. It was provided, however, that all trainmen, brakemen and helpers, other than those on furlough when Award 282 became effective, were to retain their employment until they retired, were discharged for cause, resigned or died. These men became known as "protected employees". In other words, any reduction of the size of crews authorized by the special boards of adjustment would not become effective except by attrition in the ranks of employees. In an action brought

by organizations of employees to impeach the Award, the decision of Board was confirmed. *Brotherhood of Locomotive Firemen and Enginemen* v. *Chicago, B. & Q. R. Co.*, 225 F. Supp. 11, aff'd. 118 U.S. App. D.C. 100, 331 F. 2d 1020, cert. den. 377 U.S. 918.

Numerous special boards were eventually created on various railroad lines pursuant to Award 282, and a great many decisions changing the size of specific crews were rendered. Some of these local boards were still in operation at the termination of the effective period of the award, namely, January 25, 1966. This Court held that the local boards had no power to act subsequently to that date, *Akron & Barberton Belt R. Co.* v. *Brotherhood of Railroad Trainmen*, 252 F. Supp. 207, 210-211.

The original controversy that arose in 1959 was resumed by the service of notices by the defendant Brotherhood on about eighty railroads between June 18 and July 7, 1965. The notices uniformly proposed minimum crews of one conductor or foreman and two trainmen or helpers, precisely as had been done in the notices served in 1960. The carriers responded on December 24, 1965 by serving notices parallel to those they had served in 1959, proposing a rule leaving the size of crews entirely within the discretion of the management. Attempted conferences proved abortive, because the carriers took the position that the notices were premature while Award 282 was in effect and, therefore, could not be served prior to January 25, 1966. This position was upheld by this Court especially in view of the fact that local boards created under Award 282 were then operating on many railroads and were dealing with the same question. Nevertheless this Court also ruled that the notices actually served need not be served again after January 25, 1966, but would be deemed effective as of that date. *Akron & Barberton Belt R. Co.* v. *Brotherhood of Railroad Trainmen*, 250 F. Supp. 691, 697.

After this decision of this Court culminated in a final judgment on May 12, 1966, conferences were resumed in accordance with the decree. Separate meetings were held at different times and places in respect to individual railroads. The earliest were in connection with the three plain-

tiffs in this action—Atlantic Coast Line, Boston and Maine, and Des Moines Union Railway. In each instance the employer and employees were represented by their local officials. In each instance, the employer's representative requested that the issue be negotiated on a national basis by national representatives of the two groups, instead of separately on each "property", using the jargon of the railroad industry. The basis for this request was the fact that uniform notices, each containing identical proposals, were served practically simultaneously on numerous carriers. In each instance representatives of the Brotherhood declined to accede to "national handling" of the question and insisted that the matter be considered separately as to each road that had received or served notices. The separate conferences did not result in any agreement or adjustment of the dispute.

In each instance after being notified of the outcome by its local representative, the President of the Union, Charles Luna, requested the services of the National Mediation Board. The Board granted the applications. Accordingly separate mediation sessions were held in respect to each of the three roads under the guidance of a mediator designated by the Board. These proceedings likewise proved unavailing. The Mediation Board, in accordance with the requirements of the Act, in each instance then proffered arbitration. The railroads consented, but the Brotherhood declined to submit the matter to arbitration. The Board then formally notified the contending parties, again in accordance with the statutory provisions, that it was terminating its services. This action started the thirty-day period, at the end of which the parties would be free to resort to self-help. In other words the Union would be at liberty to call a strike. While this result could have been prevented, for the time being at least, if the Mediation Board, again in accordance with the statute, certified the matter to the President for the creation of an Emergency Board, the Mediation Board failed to act on the suggestion of the carriers that this be done. The present law suit was then instituted by the three railroads.

It is understood to be the defendant's position that it is

free to call a strike if it chooses to do so on any one of the three roads involved in this action. On the other hand, it is claimed by the plaintiffs that there has been no compliance with the prerequisites prescribed by the Railway Labor Act, in that the negotiations did not comply with its terms and, therefore, they should be resumed and conducted on a proper basis. This contention, in turn, is predicated on two grounds. First, it is urged that the attitude of the representatives of the Union at the conferences was so adamant and intransigent as to preclude a real, sincere discussion and genuine negotiation. Second, it is argued that the railroads were entitled to conduct negotiations as a multi-employer unit on a national basis instead of separately with each road, in view of the fact that the notices were served by the Brotherhood practically simultaneously and made in effect identical demands. We shall discuss separately each of these two aspects of the subject.

Taking up the first of these two contentions, it is necessary to define the statutory duty to negotiate. It is an obligation to negotiate genuinely and sincerely with the aim of amicably settling the differences between the parties and concluding an agreement. It is not sufficient to appear at a conference or a meeting with the other party and to submit an offer, or to make a demand, and yet to decline to argue its merits, or to refuse to entertain or discuss a counter-proposal. It is not a genuine negotiation to indicate that the other party has no choice except to accept the offer or accede to the demand. The service of an ultimatum does not constitute a negotiation.

On the other hand, a party is not required to agree or to make concessions. It has a right to maintain a resolute and firm attitude. It was said recently by the Court of Appeals for this Circuit that, "It is elementary that firmness of a bargaining position does not constitute bad faith", *Dallas General Drivers, etc.* v. *N.L.R.B.*, 122 U.S. App. D.C. 417, 419, 355 F. 2d 842, 844. All that is required is to enter into a sincere genuine discussion, to consider the objections and suggestions advanced by the other party, to discuss the relative merits of its own proposals and those of any counter-offer, and finally, if convinced, to make such concessions as may seem appropriate.

In the leading case decided under the Railway Labor Act, *Virginian Ry.* v. *Federation*, 300 U.S. 515, 548, Justice Stone defined this duty as follows:

> "The statute does not undertake to compel agreement between the employer and employees, but it does command those preliminary steps without which no agreement can be reached. It at least requires the employer to meet and confer with the authorized representative of its employees, to listen to their complaints, to make reasonable effort to compose differences—in short, to enter into a negotiation for the settlement of labor disputes such as is contemplated by § 2, First."

This case holds that a fulfillment of this obligation may be compelled by judicial decree.

In *National Labor Relations Board* v. *American National Ins. Co.*, 343 U.S. 395, 402, Chief Justice Vinson stated that a mere willingness to enter upon a sterile discussion does not constitute a fulfillment of the duty to bargain. The parties must be willing to negotiate in good faith, to match their proposals, if unacceptable, with counter-proposals, and to make every reasonable effort to reach an agreement.

Taking up each of the three plaintiff railroads separately, conferences of officials of the Atlantic Coast Line and of the Union were held on June 29 and 30, 1966, and again on four days in July. At the outset the carrier's representatives in the light of prior precedents requested that the subject be handled on a national basis, since numerous railroads were concerned. This request was flatly denied by the representatives of the Union. Both the carrier and the Union made some concessions, which did not appear to be sufficient to the other party. They were unable to arrive at a middle ground, and on July 27, the conferences were terminated. The President of the Union, Charles Luna, then requested the services of the National Mediation Board. A series of mediation conferences were held with a member of the Board, but likewise proved unavailing. The Board then formally terminated its services. During the conferences there were full discussions of the various aspects of the differences between the parties. The Court

finds that the negotiations were genuine, and concludes that they complied with the Railway Labor Act.

As to the Boston and Maine, meetings of the representatives of the carrier and the Union were held on July 12 and 13, 1966. The former requested national handling which was refused by the Union. There was considerable discussion. The representative of the Union receded from his extreme position and agreed not to insist on a crew of three on so-called single Budd cars used in passenger commuter service. The conference adjourned with the understanding that the carrier's representative would submit a counter-proposal. Before this was done, however, the President of the Union applied for the services of the National Mediation Board, and several sessions were held with the mediator in September. The carrier presented a proposal consisting of a number of items. The representatives of the Union accepted some and rejected others. No agreement was reached, and in this case the Board formally terminated its services. The Court finds that the negotiations were genuine and concludes that they complied with the requirements of the statute.

The situation in respect to the Des Moines Union Railway was somewhat different. This carrier is a little road a few miles in length, located entirely within the city of Des Moines, Iowa, and rendering solely freight service. It operates with a small number of crews. Consequently the range of discussion necessarily was narrow. Conferences were held on June 30, and again on August 11. National handling was requested by the carrier, but refused by the Union. The representative of the Union argued that a crew of one conductor or foreman and two brakemen or helpers would be more economical and productive, even from the standpoint of the railroad, than a crew of two men, which was the desire of the carrier. There was a thorough discussion. Neither side receded from its position and there was no agreement. In the light of the circumstances, the Court is unable to find that a genuine negotiation was lacking and, therefore, concludes that there was compliance with the pertinent provisions of the Railway Labor Act.

It was argued by counsel for the carriers, however, that in order that a negotiation may be deemed genuine as complying with the statutory requirements, a party's proposals must be reasonable. He contended that it must be within a debatable range and not so extreme as necessarily to preclude favorable consideration. He urged that the proposal of the Union would have actually wiped out everything that had been accomplished under Award 282, and would have brought conditions back to August 1963, when Congress ordered a compulsory arbitration. Counsel argued that the carrier could not be expected to give a sympathetic hearing to such an extreme demand.

The Court is unable to accept this view. In negotiations generally, parties at times, as a matter of tactics, start from an immoderate position. Genuineness of negotiations does not necessarily depend upon the nature or reasonableness of the initial proposal. In fact, in this instance the carriers' original proposal was equally untenable. Moreover, the reasonableness of a proposal contained in a Section 6 notice, should not be subject to judicial review. Cases relating to the question whether specific topics are within the realm of collective bargaining are distinguishable in principle.

A much more complicated problem arises in connection with the carriers' contention that they were entitled to negotiate on a national basis, as a multi-employer unit, and that each individual carrier could not be required to negotiate with the Union separately. A brief summary of the two national organizations is necessary in this connection. All Class I railroads in this country as a group have established a central organization, known as the National Railway Labor Conference, having its headquarters in Chicago. James E. Wolfe is the President of the Conference and is aided by an Assistant and a number of vice presidents. The Conference represents railroads in labor matters and specifically in negotiations with various Unions of railroad employees. From time to time, individual carriers give a power of attorney to the Conference to represent them. While negotiations on individual railroads may be conducted by company officials, a vice president of the Conference generally participates, if and when the proceedings reach the mediation stage.

The defendant Brotherhood of Railroad Trainmen, as its name indicates, is composed of trainmen employed by various railroads. It is likewise a national organization, with its headquarters in Cleveland. Its President is Charles Luna, who is aided by an assistant and vice presidents assigned to various regions. An official of the Union, known as a General Chairman, is attached to every railroad or group of railroads. In turn, he is assisted by local committees. Conferences involving a single railroad are ordinarily conducted either by a local committee, or by the General Chairman assigned to the carrier. If and when the matter reaches the mediation stage, a vice president of the Union is designated by the President to assist the General Chairman and in effect to take charge of the proceedings.

For many years it has been the practice in the railroad industry to handle on a national basis the adjustment of labor disputes that affect more than a single carrier. The railroads became a multi-employer bargaining unit. The National Railway Labor Conference acts as its representative. Among the numerous topics that have been treated in this manner are wage disputes, health and welfare matters, Union shop, vacations, supplemental annuities, conditions of employment and other similar subjects. Only within the past few months the defendant Union, through its President, Charles Luna, negotiated a wage agreement with numerous railroads on a national basis, James E. Wolfe acting as their representative. The result was a substantial raise in trainmen's wages.

Whenever a series of identical notices is served on a number of carriers, at about the same time, the subject matter is peculiarly fitting for what is called in the industry "national handling" and becomes a "national issue". The National Mediation Board has on a number of occasions urged negotiations and adjustments on a national basis in such cases. It has discouraged attempts to negotiate such matters individually with each railroad concerned.

The present controversy is a continuation of the dispute commenced by the service of notices in 1959 and 1960. It was conducted on a nation-wide basis, until the new notices were served in 1965. Then the Union retreated from any

attempt to resume and continue negotiations on a national scale. It began to insist on treating with each railroad, separately. This new phase appears to be an unusual instance in which national handling has been resisted in a case of notices making the same demand on a number of carriers served at about the same time.

Actually the current stage of the dispute has been handled nationally on both sides, except that the Union declined to face the carriers as a group. In June 1965 Mr. Luna, the President of the Union, sent a circular letter to all local General Chairmen of his organization instructing them to serve Section 6 notices prior to July 7, 1965, making a uniform demand for the adoption of a requirement that every train and yard crew consist of a minimum of three persons, one conductor or foreman and two brakemen or helpers. A draft of the proposed notice was attached to the circular letter for use by the General Chairman. About eighty notices on as many railroads, identical in form, were served within three weeks after Mr. Luna's letter was sent out.

When the carriers started to receive these notices, Mr. Wolfe, in turn, sent a circular letter to the railroads proposing a uniform reply and enclosing a draft. He also caused about 100 carriers to send uniform notices to the Union, making identical counter-proposals. The General Chairmen of the Union transmitted to Mr. Luna the replies that came from the carriers, and were instructed by him how to proceed further. In each instance he warned them to decline any request for national handling of the dispute. The degree of control at the national headquarters of the Union is illustrated by the fact that one General Chairman suggested that it might be well to accept what he called a "short crew", and demand additional compensation instead. Mr. Luna promptly replied politely but firmly, that this course would be contrary to Union policy, because the Union wanted to insist on the larger size crew. The suggestion was immediately dropped by the General Chairman who originated it.

The evidence shows that Mr. Luna's purpose in avoiding negotiations on a national basis in this instance and preferring to deal with each railroad separately, was to escape

from being eventually relegated to a position where he would have a choice of calling either a nationwide strike, or no strike at all. He realistically realized as a result of his experience in 1963 that Congress would not tolerate such a national emergency, but thought that Congress might not interfere with separate strikes on individual railroads at different times. His plan was to isolate every railroad and call separate strikes, one at a time, in order to achieve his ultimate objective, step by step.

Mr. Luna agreed that many subjects were susceptible of national handling. In fact, as has been indicated, within the past few months he, himself, negotiated a wage agreement with the railroads on a national basis. At the trial it was argued by the Union, however, that the size of crews is peculiarly a local matter, because it depends in large part on conditions prevailing on various railroads in different parts of the country. At first blush this argument seems plausible on its surface. It is contradicted, however, by the very actions of the Union. The fact that the Union served identical notices on about eighty railroads within a period of less than three weeks, proposing a general rule regulating the size and composition of crews, clearly demonstrates that the Union regarded this subject as appropriate for uniform regulation and, therefore, suitable for negotiations on a national basis.

It is clear that each of the two rival commanders-in-chief, Mr. Wolfe for the carriers and Mr. Luna for the Union, in a far-sighted manner planned a series of strategic moves. Each organized a united front. One desired to use his forces to face his adversary as a unit. The other planned to pursue the policy of divide and conquer. He did not want to confront his opponent's united front. At this point the law and the public interest step in.

The evidence establishes the fact that as a matter of custom and practice the railroads have for many years acted jointly in labor disputes as a multi-employer unit represented by the National Railway Labor Conference whenever the controversy involved a number of carriers. The Railway Labor Act by its express provisions authorizes carriers to act jointly as a group in negotiating matters initiated by notices under Section 6. Thus, it is provided in Section 1,

which contains definitions, paragraph Sixth, 45 U.S.C. § 151, as follows:

> "Sixth. The term 'representative' means any person or persons, labor union, organization, or corporation designated either by a carrier or *group of carriers* or by its or their employees, to act for it or them." (Emphasis ours.)

The conclusion follows that a group of carriers may designate a single representative. It seems significant that the original 1926 Act, 44 Stat. 577, did not include any definition of the word "representative", but that this paragraph was inserted by an amendment in the 1934 Act, 48 Stat. 1185, which revamped the original statute. Section 2 of the Act, 45 U.S.C. § 152 contains the following provision:

> "Second. All disputes between a carrier *or carriers* and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier *or carriers* and by the employees thereof interested in the dispute." (Emphasis ours.)

The Act should, therefore, be construed as authorizing and empowering carriers to bargain and negotiate as a group in any labor dispute cognizable under the Railway Labor Act. This consideration is alone sufficient to sustain the position of the carriers, that in failing to meet and confer with them through a representative of the entire group the Union has failed to comply with the first requirement of the Railway Labor Act, namely, to confer and conduct a genuine negotiation.

The existence of multi-employer bargaining units and their right to insist on negotiating as a group, has been recognized and sanctioned by judicial decisions. In *National Labor Relations Board* v. *Truck Drivers Union*, 353 U.S. 87, eight employers in the linen supply business in and around Buffalo, New York, comprised the membership of the Linen and Credit Exchange. For approximately 13 years the Exchange had bargained with the Truck Drivers on a multi-

employer basis and negotiated collective bargaining agreements signed both by the eight employers and by the Union. In the course of negotiations for a new contract, the Union called a strike at the plant of one of the employers. The remaining seven members laid off their employees, advising the Union that these drivers would be reinstated if the Union ended the strike. Shortly thereafter a new agreement was reached, the strike was terminated, and all the drivers were recalled to duty. The Union filed charges with the National Labor Relations Board that the lock-out had constituted an unfair labor practice. The Supreme Court sustained the integrity of the multi-employer bargaining unit and the right of the employers to insist on negotiating on a group basis. It was held that as a defensive and retaliatory measure the employers who were not affected by the strike had a right to have recourse to a temporary lock-out. Mr. Justice Brennan in the course of his opinion, made the following observation (p. 95):

> ". . . in many industries the multi-employer bargaining basis was a vital factor in the effectuation of the national policy of promoting labor peace through strengthened collective bargaining."

In a later decision, *National Labor Relations Board* v. *Brown*, 380 U.S. 278, the Supreme Court went even further. Five operators of retail food stores in Carlsbad, New Mexico, composed a multi-employer bargaining group and had negotiated and contracted successfully on a group basis with the Local Retail Clerks Union for many years. In the course of negotiations for a new agreement the Union called a strike against one of the employers. The remaining employers continued to carry on their business, but locked out all their employees who were represented by the Union, and in the meantime operated with other members of the staff and some temporary employees. The strike continued for over a month. When an agreement was reached, both the strikers and the employees who had been locked out were restored to their jobs. The Supreme Court sustained the right of the employers to negotiate as a group, and as a corollary upheld their privilege to use a lock-out as a de-

fensive measure in case of a strike against one member of the multiple unit. A strike of this nature has become known in the field of labor relations as a "whipsaw" strike.

The principle emerges from these two decisions that a group of employers has the right to insist on negotiating labor disputes as a multi-employer bargaining unit and its members may refuse to negotiate singly. While the Supreme Court sanctioned the use of a lock-out as a defensive weapon against a violation of this right, there is no intimation that this constitutes the exclusive remedy available to the employers. Manifestly, a lock-out cannot be invoked by a railroad or other public utility, for it must continue operating and must have competent employees for that purpose. Carriers may resort to other measures to vindicate their right to negotiate as a unit. The Supreme Court in *Virginian Ry.* v. *Federation,* 300 U.S. 515, held that the duty to negotiate in accordance with the requirements of the Railway Labor Act may be enforced by judicial decree. The conclusion is inescapable that the right of employers to negotiate as a group may be compelled in that manner.

Various Courts of Appeals have had occasion to apply these principles. They have enforced this duty reciprocally against individual employers. Thus, in *National Labor Relations Board* v. *Sheridan Creations, Inc.* (2d Cir.) 357 F. 2d 245, an employers' association was organized to negotiate in behalf of its members as a unit in labor disputes of general interest, leaving to the individual employers the task of negotiating on matters affecting them separately. A member of the employers' association sought to withdraw after negotiations for a new contract were started, and refused to be bound by the agreement negotiated by his organization. The Court held that an employer was not entitled to withdraw after the negotiations started and was obligated by the contract concluded in behalf of the group.

In *Universal Insulation Corp.* v. *N.L.R.B.* (6th Cir.) 361 F. 2d 406, it was likewise held that an employer member of a collective bargaining association was bound by the contract made by the organization and was not entitled to withdraw after negotiations for a new agreement had started.

Publishers' Association of New York City v. *N.L.R.B.* (2d Cir.) 364 F. 2d 293, is cited as an authority to the contrary. In that case the Union had timely withdrawn from multi-employer bargaining unit negotiations. The National Labor Relations Board sustained the action of the Union, and its decision was affirmed by the Court of Appeals. The Court intimated, however, that the employers had the weapon of a lock-out for their protection. Such a weapon does not in fact exist in connection with the railroads and other public utilities, and, therefore, this decision is neither controlling or persuasive.

While it is true that the decisions that have been just discussed were rendered under the National Labor Relations Act, instead of under the Railway Labor Act, the difference is one in fact, and there is no distinction in principle, since the obligation to negotiate in a genuine manner exists under both statutes. This question has not been litigated to any extent under the Railway Labor Act, because it has not arisen. There is, however, a decision where the question was discussed in connection with that statute, in which Judge Ryan of the Southern District of New York wrote the opinion, *Kennedy* v. *Long Island Railroad Co.*, 211 F. Supp. 478, 488, affirmed 319 F. 2d 366, cert. den. 375 U.S. 830. He made the following comments on this point:

> "Multicarrier bargaining of labor demands, referred to as regional and national handling, has been and is (since the Act) the customary method of collective bargaining."

In the light of the foregoing discussion, the Court finds that the carriers had an established multi-employer bargaining unit for negotiating labor disputes affecting more than one carrier. The Court concludes that the plaintiffs had a right to insist on negotiating in that manner and that negotiations not so conducted did not comply with the requirements of the Act. The right to negotiate as a multi-employer bargaining unit may be enforced and compelled by judicial decree. It follows hence that the defendant has not exhausted its remedies under the Railway Labor

Act and it would therefore be a violation of law for the defendant to call a strike on any of the plaintiff railroads in the present posture of the controversy.

Insofar as the Norris-LaGuardia Act is concerned, which counsel for the Union cite, it has been held on numerous occasions that where the Railway Labor Act conflicts with the Norris-LaGuardia Act, the former prevails. *Virginian Ry Co.* v. *Federation*, 300 U.S. 515, 562-3; *Brotherhood of Railway Trainmen* v. *Chicago R. & I.R. Co.*, 353 U.S. 30; *Brotherhood of Locomotive Engineers* v. *Louisville & N. R. Co.*, 373 U.S. 33; *Manning* v. *American Airlines Inc.* (2d Cir.) 329 F. 2d 32, 34; *Akron & Barberton Belt R. Co.* v. *Brotherhood of Railway Trainmen*, 250 F. Supp. 691. The Norris-LaGuardia Act does not apply if the remedies under the Railway Labor Act have not been exhausted.

Accordingly the Court will render judgment directing the defendant to negotiate with the plaintiffs on a multi-employer unit basis and enjoining the calling of a strike on any of the plaintiff railroads until and unless such negotiations are properly held and concluded and all the other remedies provided by the Railway Labor Act are also exhausted.

This opinion will constitute findings of fact and conclusions of law. Counsel may submit a proposed judgment.

ALEXANDER HOLTZOFF,
United States District Judge.

January 16, 1967.

APPENDIX B

Before BASTIAN, *Senior Circuit Judge,* TAMM AND LEVENTHAL, *Circuit Judges.*

LEVENTHAL, *Circuit Judge:* This appeal involves still another phase of the railroad work rules dispute that erupted again in 1959 when the nation's major carriers served notices under Section 6 of the Railway Labor Act, 45 U.S.C. § 156 (1964), to abrogate existing rules regulating the use of conductors and trainmen, or "crew consist," on yard and road crews. We have recently recounted the events that followed this opening round.[1] It suffices here to say that in 1960 the Brotherhood of Railroad Trainmen (BRT) served counter notices insisting that not less than one conductor and two trainmen be employed on all road and yard crews; negotiations and mediation proved unsuccessful, and only Congressional intervention and provision for compulsory arbitration forestalled a strike in 1963.

The arbitration award of Board 282 apparently failed to achieve one of its purposes, of guiding the way to a general, long range settlement.

In June and July of 1965 the BRT, anticipating the expiration of the arbitration award in January 1966, served identical notices on some eighty carriers embodying the same proposal they had made in 1960. The carriers responded that these notices were premature in insisting on bargaining during the pendency of the arbitration award, but in December 1965, without waiving their prematurity objection, those eighty carriers plus some twenty others served notices on the BRT proposing the same management-discretion rule they suggested in 1959. No genuine conferences had been held on either group of notices when the carriers obtained injunctions prohibiting a strike over their failure to bargain on the union's allegedly premature notices. We recently reversed the grant of this relief in

---

[1] *See* Brotherhood of Railroad Trainmen v. Akron & B. Belt R.R., — U.S. App. D.C. —, — F.2d — (Nos. 21052 et al. May 12, 1967, Supplemental Opinion July 31, 1967.)

a decision (see note 1), holding that the union's notices were not in law premature.

In the meantime, conferences were taking place on the local properties, and some agreements were reached. The carriers had requested that the BRT acquiesce in their suggestion that if local negotiations bore no fruit, the dispute be referred to "national handling." From the outset the BRT refused to concur in this request. When local conferences broke down on various roads, the services of the National Mediation Board were invoked. The Board ignored a request by the carriers that mass mediation be scheduled, and instead docketed each dispute separately.

In November 1966, appellees, the Atlantic Coast Line Railroad, the Boston & Maine Corporation, and the Des Moines Union Railway, sued in the District Court for declaratory and injunctive relief against a possible strike on the grounds that the BRT first, had not participated in good faith negotiations at the local level, and, second, had breached a statutory obligation by refusing the request for national handling. The District Court after a trial rejected the first contention, but granted the relief sought on a finding that the Railway Labor Act authorized the carriers to demand national handling. In the context of this dispute we disagree, and accordingly we reverse.

I

Defense of Res Judicata

Before proceeding to the merits, we encounter the BRT's timely assertion that the carriers' prayer for relief was barred by the principle of *res judicata*, and in particular its manifestation in the doctrine of merger. The essence of this contention is that after the carriers procured their original injunction in January 1966, based on the supposed prematurity of the notices and the absence of any responsibility of the carriers to bargain prior to that time, the carriers filed a motion for supplemental relief in which they sought and obtained a ruling that genuine conferences still had not taken place. The BRT argues that the carriers could then have raised, and therefore were then obliged to raise, any objection to the refusal to go to national handling.

It is a well-settled and virtually axiomatic rule of sound judicial administration that a party having several alternative grounds for relief arising out of a particular transaction does not have the privilege of litigating his theories one at a time, holding one in reserve while he presses another to judgment. According to the complementary principles of bar and merger, whether a party loses or wins relief in his initial action, the judgment embodies all his rights stemming from the transaction involved, and he is foreclosed from later seeking relief on the basis of issues he might have raised in the prior proceeding to support the original claim.

The question in this case, however, is whether the carriers could have and should have raised the national handling problem in their April 1966 motion for supplemental relief. The transcript of the hearing on that motion reveals clearly that the District Court specifically inquired of counsel for the carriers whether he was urging as a violation of the BRT's duty under the Act its refusal to accept national handling. Counsel replied that he was "not urging that at this time." The BRT contends that this indicates that the dispute had materialized sufficiently to oblige the carriers to join this basis for their claim that bona fide conferences were not taking place.

In two recent cases we applied the principle of *res judicata* to cut off objections made by the BRT in litigations involving other carriers.[2] But we do not think it appropriate to invoke that principle against the claim of appellee carriers in this case. The carriers' motion for supplemental relief was based on the District Court's reservation of jurisdiction to construe and effectuate its judgment pronouncing the 1965 notices premature. The carriers sought a declaration that genuine conferences had not yet taken place. They did not have an obligation at that time to expand the relief they were seeking, even though the BRT was on record as opposing the demand for national handling, for this demand by the carriers was conditioned on the failure of local con-

---

[2] *See* Brotherhood of Railroad Trainmen v. Chicago, M. St. P & Pac. R.R., — U.S. App. D.C. —, — F.2d — (Nos. 19867 et al. May 19, 1967); Brotherhood of Railroad Trainmen v. St. Louis Sw. Ry., — U.S. App. D.C. —, — F.2d — (Nos. 20212 et al. May 19, 1967).

ferences, and it was not yet clear that genuine, good faith local negotiations had been tried and exhausted. Added to the lack of ripeness at that time, there is a serious question about the propriety of introducing this issue in a motion for relief at the foot of the earlier decree, which was directed at very different questions. In this circumstance, we decline to dispose of the case on *res judicata* grounds.

II

National Handling and the Railway Labor Act

Coming to the merits, we conclude that the District Court erred in holding that the Railway Labor Act authorized the carriers to insist on national handling of this issue.

We reject the positions of both parties on the issue whether the Railway Labor Act permits a party to demand that national movements (the coordinated efforts to establish similar rules on a large number of railroads) be referred to national handling. One party says always, the other says never. Instead we find persuasive a more individuated approach, akin to that suggested in the brief of the United States appearing as *amicus curiae* urging reversal, which we shall set forth after analyzing the views of the parties.

The Carriers' Contention. The carriers say that national handling is the common technique for dealing with national movements in the railroad industry.

They assert that national handling can be demanded as of right when similar proposals are served at about the same time or upon a number of carriers. They lean on the language of Sections 1, Sixth, and 2, Second, of the Railway Labor Act,[3] and emphasize certain words, as will be indicated. Section 1, Sixth, defines "representative" as used in the Act to mean "any person or persons, labor union, organization, or corporation designated either by a carrier *or group of carriers* or by its or their employees, to act for it or them." Section 2, Second, declares that "disputes between a carrier *or carriers* and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and au-

[3] 45 U.S.C. §§ 151, Sixth, 152, Second (1964).

thorized so to confer, respectively, by the carrier or *carriers* and by the employees thereof interested in the dispute."

The carriers also argue that the dominant purpose of the legislative scheme, avoidance of interruptions in the flow of interstate commerce, would be promoted by recognizing a right to demand national handling, since historically national strikes have been infrequent, due to the pressure of public opinion and the threat of congressional intervention.

The BRT's Response. The BRT also invokes statutory language, pointing to Section 2, Ninth.[4] That section authorizes the National Mediation Board to designate the bargaining agent for railroad employees and, as the Board itself has construed it, refers only to certifications of single carrier units. From this BRT concludes that the single carrier unit is the only required bargaining unit.

BRT also turns to the history of national handling and argues that in the past all parties have always recognized the national approach to be a voluntary one, when carriers and union have shared the opinion that it would be more efficient and conducive to a settlement to bargain on a national scale. The union further contends that national handling of the crew consist issue, at least, ought not be found mandatory because past experience has demonstrated that it is unsuited to the prospect of successsful settlement. And, finally, the BRT insists that even if it be assumed that national handling might be required on this issue in some circumstances, there must be an opportunity for withdrawal from national handling, and that here the union clearly signified its desire to bargain only on the local properties far enough in advance that it may not be compelled to accede to such handling now.

The District Court Ruling. The District Judge interpreted Sections 1, Sixth and 1, Second of the Act as "alone sufficient to sustain the position of the carriers," holding the Act authorizes and empowers the carriers "to bargain and negotiate as a group in any labor dispute cognizable under the Railway Labor Act."

It reviewed the recent instances of national consideration of the crew consist issue, and held that the service of identi-

[4] 45 U.S.C. § 152, Ninth (1964).

cal proposals on some eighty carriers automatically demonstrates the continued appropriateness of national handling of this issue. This major premise of the District Court syllogism is not supportable in our view, and accordingly we reverse its conclusion that the present refusal to accept national handling constituted a bad faith abrogation of the BRT's statutory obligations.

It cannot be disputed that although the BRT and the carriers have occasionally discussed crew consist problems on a national scale, there has never been a national crew consist rule. That distinguishes the crew consist issue markedly, for example, from the national rule contained in the National Diesel Agreements governing the use of firemen. The thousands of existing crew consist agreements have been negotiated at the local level. This crucial distinction was emphasized by the Presidential Commission appointed to investigate the conditions on American Railroads. *See* REPORT OF THE PRESIDENTIAL RAILROAD COMMISSION 54 (1962). That this has been the effective past practice, and promises the most encouraging likelihood for agreement, was reiterated by the Neutral Members of Board 282 who explained that it was in the light of this practical reality that they decided to remand the crew consist disputes to local negotiation, and if necessary to local arbitration. *See Opinion of the Neutral Members,* 41 LAB. ARB. 680, 682, 686-87, 693-98 (1964). These objective observers concluded forcefully: "A national prescription of crew size would be wholly unrealistic." 41 LAB. ARB. at 694. We would require a strong showing of continuous collective bargaining practice on a national scale before we find an obligation imposed by Congress to bargain on a basis deemed "wholly unrealistic" by objective boards officially deputized to study the underlying problems and formulate appropriate dispositions. The procedures of the Act are purposefully long and drawn out to afford the maximum inducement to peaceful settlement, but the Act does not require efforts clearly at war with reality.

What constitutes good faith bargaining in the railroad industry is colored by how parties have actually bargained

in the past. The Railway Labor Act does not universally and categorically compel a party to a dispute to accept national handling over its protest. Such bargaining is certainly lawful, however. Whether it is also obligatory will depend on an issue-by-issue evaluation of the practical appropriateness of mass bargaining on that point and of the historical experience in handling any similar national movements. The history and realities of crew consist bargaining in this industry impel the conclusion that mass handling was not required by the statute for bargaining on that issue.

The conclusion that appellant breached its statutory obligation was not warranted, and the issuance of an injunction was improper.

Reversed.

APPENDIX C

Before: BASTIAN, Senior Circuit Judge, and TAMM and LEVENTHAL, Circuit Judges.

JUDGMENT

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof It is ordered and adjudged by this Court that the judgment of the District Court appealed from in this cause be, and it is hereby, reversed.

It is further ORDERED by the Court that appellant herein recover from appellees its taxable costs on this appeal, and have execution therefor.

Per Circuit Judge LEVENTHAL.

Dated: SEP 6—1967.

APPENDIX D

Statutes Involved

Section 3 of P.L. 88-108, 77 Stat. 132:

Sec. 3. Promptly upon the completion of the naming of the arbitration board the Secretary of Labor shall furnish to the board and to the parties to the dispute copies of his statement to the parties of August 2, 1963, and the papers therewith submitted to the parties, together with memorandums and such other data as the board may request setting forth the matters with respect to which the parties were in tentative agreement and the extent of disagreement with respect to matters on which the parties were not in tentative agreement. The arbitration board shall make a decision, pursuant to the procedures hereinafter set forth, as to what disposition shall be made of those portions of the carriers' notices of November 2, 1959, identified as "Use of Firemen (Helpers) on Other Than Steam Power" and "Consist of Road and Yard Crews" and that portion of the organizations' notices of September 7, 1960, identified as "minimum Safe Crew Consist" and implementing proposals pertaining thereto. The arbitration board shall incorporate in such decision any matters on which it finds the parties were in agreement, shall resolve the matters on which the parties were not in agreement, and shall, in making its award, give due consideration to those matters on which the parties were in tentative agreement. Such award shall be binding on both the carrier and organization parties to the dispute and shall constitute a complete and final disposition of the aforesaid issues covered by the decision of the board of arbitration.

Railway Labor Act, 44 Stat. 577, as amended, 45 U.S.C. § 151 et seq.:

Section 1. When used in this Act and for the purposes of this Act—

• • • • •

Sixth. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

* * * * *

GENERAL PURPOSES

SECTION 2. The purposes of the Act are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

GENERAL DUTIES

First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

Third. Representatives, for the purposes of this Act, shall be designated by the respective parties without inter-

ference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

* * * * *

Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such

information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

FUNCTIONS OF MEDIATION BOARD

SECTION 5. First. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in Section 10 of this Act) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this Act.

If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under Section 10 of this Act, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose.

SECTION 6. Carriers and representatives of the employees shall give at least thirty days' written notice of an intended

change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by Section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

* * * * *

EMERGENCY BOARD

SECTION 10. If a dispute between a carrier and its employees be not adjusted under the foregoing provisions of this Act and should, in the judgment of the Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall notify the President, who may thereupon, in his discretion, create a board to investigate and report respecting such dispute. Such board shall be composed of such number of persons as to the President may seem desirable: *Provided, however,* That no member appointed shall be pecuniarily or otherwise interested in any organization of employees or any carrier. The compensation of the members of any such board shall be fixed by the President. Such Board shall be created separately in each instance and it shall investigate promptly the facts as to the dispute and make a report thereon to the President within thirty days from the date of its creation.

There is hereby authorized to be appropriated such sums as may be necessary for the expenses of such board, including the compensation and the necessary traveling expenses

and expenses actually incurred for subsistence, of the members of the board. All expenditures of the board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

After the creation of such board and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.

• • • • •

(3055-1)